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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

In re:	)	Case No. 19-41025 WJL
	)	
ANKA BEHAVIORAL HEALTH,	)	Chapter 11
INCORPORATED,	)	
	)	Date: August 21, 2019
	)	Time: 10:30 a.m.
Debtor.	)	Location: 1300 Clay Street
	)	Courtroom 220
	)	Oakland, California 94612
	)	Judge: Honorable William J. Lafferty III

**MOTION OF THE UNITED STATES TRUSTEE, PURSUANT TO 11 U.S.C. § 1112(b)**  
**AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 1017(f) AND 9014, TO**  
**CONVERT OR DISMISS CHAPTER 11 CASE**

UST Motion to Convert or Dismiss: ANKA, Case No. 19-41025 WJL

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1 Tracy Hope Davis, United States Trustee for Region 17 (“United States Trustee”), by and  
2 through her undersigned counsel, hereby files this *Motion of the United States Trustee, Pursuant*  
3 *To 11 U.S.C. § 1112(b) and Federal Rules of Bankruptcy Procedure 1017(f) and 9014, to Convert*  
4 *or Dismiss Chapter 11 Case* (“Motion”).<sup>1</sup>

5 “Cause” exists to convert or dismiss this case for several reasons. First, ANKA Behavioral  
6 Health, Incorporated (“Debtor”) has failed to file periodic reports as required under FRBP 2015.3.  
7 Second, the Debtor failed to attend the continued meeting of creditors. Third, the Debtor has failed  
8 to provide information reasonably requested by the United States Trustee. Finally, the Debtor’s  
9 estate is suffering a substantial and continuing loss and/or diminution, and there appears to be an  
10 absence of a reasonable likelihood of rehabilitation. For these reasons, the United States Trustee  
11 has established cause to convert or dismiss this case pursuant to Section 1112(b). The Motion is  
12 supported by the following Memorandum of Points and Authorities incorporated herein, and the  
13 Declaration of Bankruptcy Analyst, Carla K. Cordero (“Cordero Decl.”) and exhibit filed  
14 concurrently herewith.

15 **I. BACKGROUND FACTS AND PROCEDURAL POSTURE**

16 **A. Summary of Facts**

17 1. On April 30, 2019, the Debtor filed a voluntary Chapter 11 bankruptcy petition.<sup>2</sup>  
18 ECF No.1.<sup>3</sup> The Debtor is represented by Wendel, Rosen, Black and Dean LLP (“Wendel Rosen”)  
19 and Trodella & Lapping LLP (collectively, “Counsel”). See PACER docket for Case No. 19-  
20 41025.

21  
22 <sup>1</sup> Hereafter, all references to “Section” in the Motion are to provisions of the Bankruptcy Code, 11 U.S.C. section 101  
et. seq., unless otherwise indicated. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

23 <sup>2</sup>The United States Trustee requests that the Court take judicial notice of the Debtor’s Petition, Schedules, Statement of  
24 Financial Affairs, and other documents filed therewith, and any amendments thereto which are in the Court’s file in  
25 this case pursuant to Fed. R. Evid. 201, as made applicable by Fed. R. Bankr. P. 9017. The information contained in  
these documents, signed under penalty of perjury by Debtor, are admissions of the Debtor pursuant to Fed. R. Evid.  
801(d).

26 <sup>3</sup> Unless otherwise noted, “ECF No.” refers to the main bankruptcy docket for case number, 19-41025 WJL.  
27

2. The Debtor's President and Chief Executive Officer, Christopher Withrow, was designated the Responsible Individual for the Debtor. ECF No. 14.

3. Mr. Withrow filed an omnibus declaration in support of certain first day motions, ECF No. 37 (the "Withrow Declaration"). According to the Withrow Declaration, the Debtor is a 501(c)(3) non-profit behavioral healthcare corporation that has operated since 1973. *Id.* at ¶ 2. Over the course of a year, the Debtor served nearly 15,000 individuals and their families and generally had 200-300 clients at any one time at over 50 facilities that it operated throughout California and Michigan. *Id.* The Debtor provided crisis residential treatment, transitional residential treatment, long-term residential treatment, outpatient services, forensic programs and vocational services. *See* ECF No. 37.

4. According to the Withrow Declaration, the Debtor commenced this bankruptcy case so that it could undertake an orderly wind down of all of its residential and outpatient treatment programs. *Id.* at ¶ 5.

5. The Debtor indicates that it filed the bankruptcy petition because some vendors threatened to discontinue services, and without those services, the Debtor could not operate its business. *Id.* at ¶ 6. Further, the Debtor indicates that its financial difficulties primarily arose because of unexpected losses associated with its expansion into new developmental disabilities service programs. *Id.* The licenses for the new locations were apparently unexpectedly delayed due to new regulations and could not be operated for significant periods while expenses accrued immediately. *Id.*

6. No trustee has been appointed in the Debtor's case. *See generally* Case Docket.

7. An official committee of unsecured creditors was appointed on May 8, 2019. ECF No. 40.

8. On May 17, 2019, the United States Trustee filed an "Appointment of Patient Care Ombudsman," appointing David N. Crapo as Patient Care Ombudsman, which was approved by this Court. ECF Nos. 62, 119.

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1           9.       The Initial Debtor Interview was conducted on May 29, 2019. Cordero Decl., ¶ 3.  
2 By email to Wendel Rosen dated May 30, 2019, the United States Trustee reminded the Debtor  
3 that certain documentation had not been provided, requesting that it provide among other things  
4 pre-petition bank statements and registers and a copy of the last audited financial statements. *Id.*  
5 and **Exhibit 1**. As of the date of this Motion, the Debtor has not fully complied with the United  
6 States Trustee's requests. *Id.* at ¶ 4.

7           10.      The first meeting of creditors ("MOC") was held on June 3, 2019, but continued to  
8 July 8, 2019. *See* PACER docket for Case No. 19-41025 WJL. Although creditors appeared at the  
9 continued MOC on July 8, 2019, neither Debtor nor its two separate Counsel appeared;  
10 accordingly, the MOC was continued to July 22, 2019. *Id.*; Cordero Decl., ¶ 7. Counsel states that  
11 "due to a calendar error," the Debtor appeared at the United States Trustee's Office in San  
12 Francisco instead of Oakland. ECF No. 217 at 4.

13           11.      According to Schedule A/B, the Debtor has an interest in the following, among  
14 other assets: (i) cash, cash equivalents, and financial assets (valued at \$704,508.95); (ii) deposits  
15 and prepayments (valued at \$381,707.78); (iii) accounts receivable (valued at \$5,502,995.69); (iv)  
16 machinery, equipment, and vehicles (valued at \$353,558.28); and (iv) a 50% interest in real  
17 property located at 2507 Evelyn Avenue, Rosemead, California 91770 (no value was given). ECF  
18 No. 99.

19           12.      The Debtor also has 100% interest in ANKA MHSA Holding Company, LLC  
20 ("ANKA MHSA") and AP& H, Inc. ("AP&H"). *See* ECF No. 99 at 16. As of the date of this  
21 Motion, the Debtor has failed to file the reports for ANKA MHSA and AP&H as required by  
22 FRBP. 2015.3. Cordero Decl., ¶ 5. These reports were due no later than seven days prior to June  
23 3, 2019. *See* Fed. R. Bankr. P. 2015.3(b). The Debtor has not sought an extension of time from  
24 this Court to file these reports. Cordero Decl., ¶ 5.

25           13.      According to Debtor's Schedules, the following debts are owed:

a. Schedule D: Secured Claims	\$7,291,940.91
b. Schedule E: Priority Claims	\$224,008.07
c. Schedule F: General Unsecured Claims	\$6,796,157.22

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ECF No. 99.

14. As set forth in the latest status conference report filed in this case, the Debtor reports it “has transitioned its patients to other providers.” ECF No. 217. It also reports that while “[m]ost of the patients were transitioned to other providers who took over the Debtor’s locations, some were moved to other providers because the counties chose to close the facilities.” *Id.* The Debtor maintains that “its remaining employees and consultants are taking steps to bill and collect outstanding receivables, determine post-petition payables, and sort stored patient records so that they can be shredded, indexed and turned over to county programs, regional centers, or other programs for long term storage, and determining how many, if any, other records need to be maintained.” *Id.* The Debtor anticipates its case will be either converted or a plan will be confirmed by the end of August 2019. *Id.*<sup>4</sup>

15. As of the date of this Motion, a motion to convert this case to a Chapter 7 has not been filed. *See* PACER docket for Case No. 19-41025 WJL. Additionally, a plan and disclosure statement have not been filed. *Id.*

16. A final order regarding the Debtor’s use of Bank of Guam’s (“Bank”) cash collateral was entered, authorizing the Debtor to use the Bank’s cash collateral to pay operating costs (payroll), etc. up to and including June 28, 2019. ECF No. 165. The Debtor has admitted through its pleadings that it cannot operate without the Bank’s cash collateral. *See* ECF Nos. 37, 38, and 69. Further, based on the Debtor’s latest status report filed, a July cash collateral budget has not been agreed to. *See* ECF No. 217.

## **B. Jurisdiction**

17. The Bankruptcy Court has jurisdiction over this bankruptcy case pursuant to 28 U.S.C. §§ 1334 and 157(b).

18. The United States Trustee bring this Motion pursuant to her statutory duty to monitor bankruptcy cases under 28 U.S.C. § 586(a)(3).

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<sup>4</sup> The Debtor states that the Creditors’ Committee has commenced drafting a liquidating plan; however, the Bank of Guam has not agreed that a liquidating plan is the best approach. ECF No. 217. The exclusivity period in this case will expire on or about August 28, 2019. *See* 11 U.S.C. § 1121(b).

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1 19. The United States Trustee has standing to prosecute the Motion pursuant to 11  
2 U.S.C. §§ 307 and 1112, and FRBP 1017 and 9014.

3 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

4 **A. Cause Exists Under 11 U.S.C. §§ 1112(b)(1) to Convert or Dismiss This**  
5 **Bankruptcy Case.**

6 11 U.S.C. §1112(b)(1) provides that:

7 Except as provided in paragraph (2) and subsection (c), on request . .  
8 . the court shall convert a case under this chapter to a case under  
9 chapter 7 or dismiss a case under this chapter, whichever is in the best  
10 interests of creditors and the estate, for cause unless the court  
determines that the appointment under section 1104(a) of a trustee or  
an examiner is in the best interests of creditors and the estate.

11 Section 1112(b) includes a non-exclusive list of what constitutes “cause;” however, the  
12 court should “consider other factors as they arise, and use its equitable power to reach the  
13 appropriate result.” *Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated*  
14 *Pioneer Mortgage Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) *aff’d*, 264 F.3d 803 (9th  
15 Cir. 2001). The bankruptcy court has broad discretion to determine what constitutes “cause”  
16 adequate for dismissal or conversion under § 1112(b). *Id.*

17 As movant, the United States Trustee bears the burden of establishing by preponderance  
18 of the evidence that cause exists. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614  
19 (B.A.P. 9th Cir. 2014) (citation omitted). Where reorganization or rehabilitation is unrealistic or  
20 futile, a chapter 11 case may be dismissed or converted even at its outset. *Johnston v. Jem Dev.*  
21 *Co. v. Johnston (In re Johnston)*, 149 B.R. 158, 162 (B.A.P. 9th Cir. 1992). And, if a bankruptcy  
22 court determines that there is cause to convert or dismiss, it must also: (1) decide whether  
23 dismissal, conversion is in the best interests of creditors and the estate; and (2) identify whether  
24 there are unusual circumstances that establish that dismissal or conversion is not in the best  
interests of creditors and the estate. *In re Sullivan*, 522 B.R. at 612.

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1           **B. Cause Exists Under 11 U.S.C. § 1112(b)(4)(F) Because the Debtor Has Failed**  
2           **to File Its Rule 2015.3 Reports.**

3           Federal Rule of Bankruptcy Procedure 2015.3 provides that:

4                   (a) In a chapter 11 case, the trustee or debtor in possession shall file  
5                   periodic financial reports of the value, operations, and profitability  
6                   of each entity that is not a publicly traded corporation or a debtor  
7                   in a case under title 11, and in which the estate holds a substantial  
8                   or controlling interest. The reports shall be prepared as prescribed  
                    by the appropriate Official Form, and shall be based upon the most  
                    recent information reasonably available to the trustee or debtor in  
                    possession.

9           Further, Fed. R. Bankr. P. 2015.3(c) provides that “an entity of which the estate controls or  
10          owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a  
11          substantial or controlling interest . . . .” (emphasis added). The report required by FRBP 2015.3  
12          “shall be filed no later than seven days before the first date set for the meeting of creditors under §  
13          341 of the Code.” Fed. R. Bankr. P. 2015.3(b). This rule not only promotes transparency in court  
14          proceedings but also promotes the avoidance of conflict of interest.

15          Here, the Debtor has failed to file the reports required by FRBP 2015.3 concerning the  
16          value, operations, and profitability of the entities in which the estate holds a substantial or  
17          controlling interest, specifically ANKA MHSA and AP&H. Cordero Decl., ¶ 5. The Debtor has  
18          also not sought an extension of time from this Court to file these reports. *Id.* Given the Debtor’s  
19          failure to comply with this reporting requirement, the United States Trustee has established cause  
20          to convert or dismiss this case pursuant to § 1112(b)(4)(F).

21           **C. Cause Exists Under 11 U.S.C. § 1112(b)(4)(G) because the Debtor Failed to**  
22           **Attend the Continued Meeting of Creditors Convened Under Section 341(a) of**  
23           **the Bankruptcy Code.**

24          Under 11 U.S.C. § 1112(b)(4)(G), cause to dismiss a case includes the failure of a debtor  
25          “to attend the meeting of creditors convened under section 341(a)...without good cause shown by  
26          debtor.” Cause under this section can be found based on a debtor’s failure to appear at a meeting  
27          of creditors despite having advanced notice. *See In re McKenna*, 580 B.R. 1, 12 (Bankr. D.R.I.  
28          2017). Further, a debtor should present a reasonable explanation or good cause as to why they

1 failed to attend the meeting of creditors. *See In re Oakland Hills Land Dev., LLC*, 2010 Bankr.  
2 LEXIS 491 at \*1-3 (Bankr. E.D. Mich. June 23, 2010).

3 Here, Counsel states that “due to a calendar error,” the Debtor appeared at the United States  
4 Trustee’s Office in San Francisco instead of Oakland. ECF No. 217 at 4. However, the first MOC  
5 was conducted in Oakland, and there is nothing in the record reflecting that the continued MOC  
6 would take place in San Francisco. *See* PACER docket for Case No. 19-41025 WJL, Time Entry  
7 Dated June 3, 2019, Statement Adjourning Meeting of 341(a) Meeting of Creditors. Meeting of  
8 Creditors Continued to July 8, 2019 at 1:00PM. 341(a) meeting to be held on 7/8/2019 at 1:00PM  
9 Oakland U.S. Trustee Office 13th Floor. Additionally, all the hearings in this case have taken  
10 place in Oakland. *Id.* Therefore, it is unclear why the Debtor and Counsel appeared at the  
11 continued MOC scheduled for July 8, 2019 in San Francisco instead of Oakland. *See* ECF No.  
12 217; Cordero Decl., ¶ 7. Given these circumstances, the Debtor has not established “good cause”  
13 for failure to attend the continued MOC in Oakland. Therefore, “cause” to convert or dismiss this  
14 case exists pursuant to § 1112(b)(4)(G).

15 **D. Cause Exists Under 11 U.S.C. § 1112(b)(4)(H) Because Debtor Has Failed to Provide**  
16 **Information Reasonably Requested by the United States Trustee.**

17 Cause also exists to dismiss or convert this case under §1112(b)(4)(H). Pursuant to  
18 §1112(b)(4)(H), cause also includes “failure to timely provide information . . . reasonably  
19 requested by the United States trustee . . .” 11 U.S.C. § 1112(b)(4)(H). “This provision imposes  
20 sanctions for a debtor’s failure to reasonably cooperate with the UST, who is charged under 28  
21 U.S.C. § 586(a)(3) with the duty to “supervise the administration of cases” under the Code.” *In re*  
22 *McKenna*, 580 B.R. at 13 (citing 7 *Collier on Bankruptcy* ¶ 1112.04 (Alan N. Resnick & Henry J.  
23 Sommer eds., 16th ed. 2017)).

24 As fully explained in the Cordero Declaration, to date, the Debtor has failed to submit all  
25 the documentation requested, including pre-petition bank statements and registers and a copy of  
26 the last audited financial statements. *See* Cordero Decl., ¶¶ 4-5 and **Exhibit 1**. Consequently, the  
27 United States Trustee has met her burden and established cause for conversion or dismissal under §  
28 1112(b)(4)(H).

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1           **E.       Once Cause is Established, Debtor Has the Burden of Establishing All**  
2           **Elements of the Statutory Defenses Available Under 11 U.S.C. § 1112(b)(2).**

3           Once "cause" is established, the burden then shifts to the debtor to demonstrate that  
4 §1112(b)(2) precludes relief under §1112(b)(1). *See Sanders v. United States Trustee (In re*  
5 *Sanders)*, 2013 Bankr. LEXIS 4681 at \*18-19 (B.A.P. 9th Cir. April 11, 2013). The only  
6 exception to conversion or dismissal would be if the bankruptcy court specifically identifies  
7 "unusual circumstances . . . that establish that such relief is not in the best interest of creditors and  
8 the estate." *See* 11 U.S.C. §1112(b)(1). For the exception to apply: (1) the debtor must prove and  
9 the bankruptcy court must "find and specifically identify" that "unusual circumstances" exist to  
10 show that conversion or dismissal is not in the best interest of creditors and the estate; and (2) the  
11 debtor must prove that the cause for conversion or dismissal was reasonably justified, and that the  
12 basis for dismissal or conversion can be "cured" within a reasonable time. *See Warren v. Young*  
13 *(In re Warren)*, 2015 Bankr. LEXIS 1775 at \*11-12 (B.A.P. 9th Cir. May 28, 2015). As noted, the  
14 debtor bears the burden of proving that unusual circumstances are present in the case that render  
15 dismissal or conversion not in the best interest of creditors or the estate. *In re Sanders*, 2013  
16 Bankr. LEXIS 4681 at \*18-19.

17           In addition to establishing unusual circumstances, a debtor or other respondents seeking  
18 to avoid conversion or dismissal must establish the requirements set forth in Section  
19 1112(b)(2)(A)–(b)(2)(B). Section 1112(b)(2) provides:

- 20           . . . and the debtor or any other party in interest establishes that–  
21               (A) there is a reasonable likelihood that a plan will be  
22               confirmed within the timeframes established in sections  
23               1121(e) and 1129(e) of this title, or if such sections do not  
24               apply, within a reasonable period of time; and  
25               (B) the grounds for converting or dismissing the case include  
26               an act or omission of the debtor other than under paragraph  
27               (4)(A)  
28               (I) for which there exists a reasonable justification  
                  for the act or omission; and  
                  (ii) that will be cured within a reasonable period of  
                  time fixed by the court.

1 11 U.S.C. § 1112(b)(2) (emphasis added).

2 Importantly, the debtor must establish each of the statutory elements set forth under Section  
3 1112(b)(2) because the statute is written in the conjunctive. *In re Om Shivai, Inc.* 447 B.R. 459,  
4 465 (Bankr. D.S.C. 2011); *Landmark Atlantic Hess Farm, LLC*, 448 B.R. 707, 717 (Bankr. D. Md.  
5 2011).

6 Here, the record does not disclose any unusual circumstances that would establish  
7 justification against granting the relief requested in the Motion.

8 **F. Cause Exists Under 11 U.S.C. § 1112(b)(4)(A) Because The Estate is Diminishing**  
9 **and The Debtor Lacks a Reasonable Likelihood of Rehabilitation.**

10 Cause exists to convert or dismiss this case pursuant to Section 1112(b)(4)(A) which  
11 provides that a case shall be dismissed or converted for “substantial or continuing loss to or  
12 diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” As the  
13 movant under § 1112(b)(4)(A), the United States Trustee is required to demonstrate both 1) a  
14 substantial or continuing loss to or diminution of the estate, and 2) the absence of a reasonable  
15 likelihood of rehabilitation. *Hassen Imports P’ship v. City of West Covina (In re Hassen Imports*  
16 *P’ship)*, 2013 Bankr. LEXIS 3870, \*37 (B.A.P. 9th Cir. Aug. 19, 2013).

17 As to the first prong of the test, “[t]he loss may be substantial or continuing. It need not be  
18 both in order to constitute cause under § 1112(b)(4)(A).” *Hassen Imports P’ship*, 2013 Bankr.  
19 LEXIS 3870 at \*38 (citations omitted). In order to make the determination required by the first  
20 prong of the statutory test, “the bankruptcy court must look beyond financial statements and fully  
21 evaluate the present condition of a debtor's estate.” *Id.* For instance, the court may consider  
22 “dwindling liquidity or illiquidity resulting from unpaid post-petition debts” as well as continuing  
23 losses or maintaining a negative cash flow following the bankruptcy filing. *Id.* at \*13. *See also*  
24 *Wide W. Servs., LLC*, 2013 Bankr. LEXIS 3822 at \*6-7 (E.D. Cal. September 12, 2013).

25 Here, the Debtor has admitted through its pleadings that it cannot operate without the use  
26 of the Bank’s cash collateral. *See* ECF Nos. 37, 38, and 69. As noted above, a July cash collateral  
27 budget has not been agreed to among the parties. *See* ECF No. 217. Thus, it appears that the  
28 Debtor may be operating without the authority to use cash collateral; and without these funds the  
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1 Debtor cannot sustain its operations. *Id.* These circumstances represent a continuing loss to or  
2 diminution of the estate. Thus, the first prong has been met.

3 In order to satisfy the second prong of Section 1112(b)(4)(A):

4 ...a movant must demonstrate that the debtor does not have a  
5 reasonable likelihood of rehabilitation. As used in § 1112(b)(4)(A),  
6 “rehabilitation does not necessarily denote reorganization, which  
7 could involve liquidation. Instead, rehabilitation signifies something  
8 more, with it being described as ‘to put back in good condition; re-  
9 establish on a firm, sound basis.’ “ ... “‘Rehabilitation’ is a different  
10 and ... much more demanding standard than ‘reorganization.’ “ ... If  
11 “ ‘the debtor, or some other party, will be able to stem the debtor’s  
12 losses and place the debtor’s enterprise back on a solid financial  
13 footing within a reasonable amount of time,’ “ then the debtor may  
14 have a reasonable likelihood of rehabilitation. ... “The purpose of §  
15 1112(b) (1) is to ‘preserve estate assets by preventing the debtor in  
16 possession from gambling on the enterprise at the creditors’ expense  
17 when there is no hope of rehabilitation.’ “ ...

18 *In re Creekside Sr. Apartments, L.P.*, 489 B.R. 51, 61 (B.A.P. 6th Cir. 2013) (internal citations  
19 omitted).

20 The second prong is easily met here, because the rehabilitation of the Debtor is neither  
21 envisioned nor possible. The Debtor made it clear in its initial papers that it had no intention of  
22 reorganizing. *See* ECF No. 37. However, as set forth in the last status conference report filed in  
23 this case, the Debtor anticipates its case will be either converted or a liquidating plan will be  
24 confirmed by the end of August 2019. ECF No. 217. However, as of the date of this Motion, a  
25 plan and disclosure statement have not been filed. *See* PACER docket for Case No. 19-41025.  
26 Based on these representations, it does not appear the Debtor has any reasonable likelihood of  
27 rehabilitation. *See, e.g., In re Wallace*, 2010 Bankr. LEXIS 261 (Bankr. D. Idaho Jan. 26, 2010)  
28 (“The issue of rehabilitation for purposes of § 1112(b)(4)(A) is not the technical one of whether  
the debtor can confirm a plan, but, rather, whether the debtor's business prospects justify  
continuance of the reorganization effort.”) (quotations and citations omitted). As both prongs of  
the statutory test set forth in 11 U.S.C. § 1112(b)(4)(A) have been established, cause exists to  
either convert or dismiss this case has been established.

1       **G.     The “Unusual Circumstances” Exception Does Not Apply When Relief is Sought**  
2       **Under Section 1112(b)(4)(A).**

3       Section 1112(b)(2) provides that the “unusual circumstances” exception does not apply if  
4       the cause for dismissal or conversion is “substantial or continuing loss or diminution of the estate”  
5       as set forth in § 1112(b)(4)(A). *See* 11 U.S.C. §1112(b)(2)(B); *see also In re Creekside Senior*  
6       *Apts., L.P.*, 489 B.R. at 63. As discussed above, the United States Trustee has established cause  
7       under § 1112(b)(4)(A) to either convert or dismiss this case. The Debtor or party in interest must  
8       now demonstrate that dismissal or conversion is not warranted. *See In re Hassen Imports P’ship,*  
9       *Bankr. LEXIS 3870 at \*45.*

10       Conversion of this case to Chapter 7 appears to be a more appropriate remedy because  
11       there may assets that are available for distribution to unsecured creditors. *See Rand v. Porsche*  
12       *Fin. Servs. (In re Rand)*, 2010 Bankr. LEXIS 5076 (B.A.P. 9th Cir. Dec. 7, 2010) (citing 7 Collier  
13       on Bankruptcy ¶ 1112.04[7] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed., 2010)) (noting  
14       that one factor supporting conversion in lieu of dismissal is “[t]he ability of the trustee in a chapter  
15       7 case to reach assets for the benefit of creditors.”). However, because the Debtor is a nonprofit  
16       corporation, the bankruptcy case cannot be converted to a chapter 7 case unless the Debtor  
17       requests conversion. *See* 11 U.S.C. § 1112(c). Accordingly, the Debtor would need to consent to  
18       conversion.

19       In the alternative, the United States Trustee does not object to dismissal of the case, if the  
20       Court ultimately determines that such relief is in the best interests of the Debtor’s creditors and the  
21       estate.

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1       **III.    PRAYER FOR RELIEF**

2           WHEREFORE, based upon the foregoing, the United States Trustee respectfully requests  
3 this Court enter an order (1) granting the motion; (2) converting or dismissing the case; and (3) for  
4 such other and further relief as is just and appropriate.

5 Date: July 18, 2019

6                               TRACY HOPE DAVIS  
7                               United States Trustee, Region 17

8                               /s/ Marta E. Villacorta  
9                               MARTA E. VILLACORTA  
10                              Trial Attorney